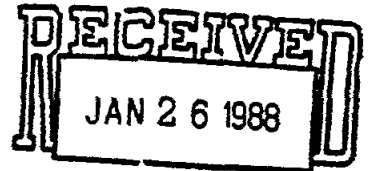


Diane Wehner
100095

OFFICE OF THE CLERK
UNITED STATES DISTRICT COURT

DISTRICT OF DELAWARE
WILMINGTON 19801

January 22, 1988



J. R. McALLISTER, JR.
CLERK

Michael F. Foster, State Solicitor
Department of Justice
820 North French Street
Wilmington DE 19801

DNREC
LEGAL OFFICE
John C. Laager, Esquire
Saul, Ewing, Remick, Saul
P.O. Box 1266
Wilmington DE 19899

Jeanne L. Langdon, Esquire
Dept. of Natural Resources and
Environmental Control
89 Kings Highway
Dover DE 19903

Re: John E. Wilson, III vs
Standard Chlorine of Delaware, Inc.
Civil Action 88-11 JLL

Dear Counsel:

This is to advise you that the consent order in the above-captioned case was signed by Judge Latchum on January 22, 1988.

Very truly yours,

John R. Mcallister, Jr., Clerk

By:

Luis N. Berl
Deputy Clerk

cc: The Honorable James L. Latchum

/lnb

AR200027

Diane Wehner
12/87

IN THE UNITED STATES DISTRICT COURT FOR
THE DISTRICT OF DELAWARE

JOHN E. WILSON, III, Secretary
Department of Natural Resources
and Environmental Control,

Plaintiff,

v.

~~STANDARD CHLORINE OF DELAWARE,~~
~~INC.~~, a Delaware corporation,

Defendant.

Civil Action No. 88-11

FINAL

CONSENT ORDER

January 22, 1988

WHEREAS, on the night of September 16, 1981, during filling of a railroad tank car at the Defendant's facility located on Governor Lea Road, New Castle County, Delaware, a spill of monochlorobenzene occurred during a heavy rainstorm, discharging approximately five thousand gallons of monochlorobenzene to the ground surface; and

WHEREAS, while most of the spill was contained by the prompt action of Defendant, test wells drilled by Defendant indicated that the Columbia aquifer had been contaminated with monochlorobenzene, benzene and other chlorobenzene compounds, with a plume of contaminated groundwater migrating off-site to the north toward Red Lion Creek, making apparent a need to address cleanup of the Columbia aquifer and to evaluate the potential

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threat to drinking water supplies in the underlying upper Potomac aquifer; and

WHEREAS, Defendant voluntarily assumed responsibility for identification and remediation of groundwater contamination of the Columbia aquifer; and

WHEREAS, a preliminary investigation of the threat to public drinking water supplies in the upper Potomac aquifer showed no contamination of that aquifer, and studies conducted by Defendant suggest a continuous clay layer beneath the site; and

WHEREAS, Defendant began, and is continuing, recovery and treatment of contaminated groundwater from the Columbia aquifer and disposal of the treated effluent in accordance with the parameters in amendments to its National Pollutant Discharge Elimination System (NPDES) permit approved by the Delaware Department of Natural Resources and Environmental Control (DNREC) in May, 1986; and

WHEREAS, on January 5, 1986, a storage tank No. 404 on the plant property collapsed, damaging two adjacent tanks and spilling the contents of all three tanks, 500,000 gallons of chlorinated benzene compound primarily paradichlorobenzene, into a wetland area along a tributary of Red Lion Creek and Red Lion Creek; and

WHEREAS, Defendant engaged a cleanup contractor and initiated remedial activities within hours of the spill, and has continued the cleanup activities to the present time; and

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WHEREAS, despite the timely and appropriate measures taken by Defendant, the January, 1986 spill caused adverse environmental effects on Red Lion Creek and the adjoining wetland areas; and

WHEREAS, DNREC has filed a complaint herein, alleging that Defendant has violated 42 U.S.C. §9601 et seq. and 7 Del. C. Chapters 60 and 63 by causing or allowing the discharge of pollutants onto the ground and into surface and groundwaters from Defendants' plant in Delaware City, Delaware and seeking civil penalties and reimbursement of costs pursuant to 42 U.S.C. §9601 et seq. and 7 Del. C. §6005 and 7 Del. C. §§6308 and 6309; and

WHEREAS, if this case were to go to trial, DNREC would introduce into evidence the results of the investigations by DNREC of these violations, as well as other evidence that Defendant violated the aforementioned laws; and

WHEREAS, the parties desire a resolution of the controversies arising out of the allegations in the complaint filed by DNREC and agree that settlement of these matters without further litigation is in the best interest of the State of Delaware and that the entry of this Consent Order (Order) is the most appropriate means of resolving this matter; and

WHEREAS, the purpose of this Order is to ensure that appropriate remedial actions are taken that are protective of human health and the environment, cost effective, utilize permanent solutions and utilize alternative treatment technologies or resource recovery technologies to the maximum extent possible

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and are consistent with the National Contingency Plan (NCP), 40 C.F.R. §300 et seq., and appropriate federal and state environmental laws; and

WHEREAS, Defendant, by entering into this Order without trial, adjudication or finding of any issues of fact or law, does not make any admission of fact, fault, liability or other admission of any kind and with respect to the subject matter of this Order.

Based on the foregoing, IT IS ORDERED AND AGREED:

1. This Court has jurisdiction of the subject matter of this action pursuant to the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), 42 U.S.C. §9601 et seq., as amended by the Superfund Amendments and Re-Authorization Act of 1986 (SARA), and pendent jurisdiction of DNREC's claims under 7 Del. C. Chapters 60 and 63.

I. INTERIM REMEDIAL ACTIONS AND MONITORING

2. Defendant shall continue to pump the four (4) recovery wells at no more than the rates authorized by DNREC to control the northward migration of contaminants and to recover the contaminated groundwater to the maximum feasible extent. Defendant shall continue to pump the four (4) recovery wells continuously, except as required to maintain compliance with Condition No. 13 of DNREC Permit No. APC 82/105-Operation for the No. 3 boiler, and except during routine maintenance and rehabilitation for which prior approval has been obtained from

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DNREC, and shutdown necessitated by emergency situations, until the closeout level as provided in paragraph 9 of this Order has been achieved, unless other means of remedying the groundwater contamination is agreed upon and implemented. The withdrawal rates from the wells shall not at any time during normal operation be less than those required to intercept and recover the contaminants in the groundwater emanating from the plant property. Defendant shall install an additional well or wells, or increase the rate of pumping upon approval of DNREC if successive reports submitted pursuant to paragraph 6 of this Order show that the four existing wells are inadequate to control migration of contaminants emanating from the plant property, including any paradichlorobenzene and trichlorobenzene that may be present from the January 5, 1986 spill.

3. Defendant shall continue use of an air stripper prior to the equalization tank to treat the recovered groundwater and, when necessary, to treat rainfall accumulation in the dredge spoil containment basin. All emissions from the stripping tower shall continue to be vented to the No. 3 boiler in compliance with Part 261 of the Delaware Regulations Governing Hazardous Waste, the Regulations Governing the Control of Air Pollution, and DNREC Permit No. APC 82/105-Operation.

4. Defendant shall continue operation of the expanded wastewater treatment facilities to treat the recovered groundwater and, if applicable, blowdown from the LTTT process (as hereinafter defined) and, as necessary, to treat rainfall accumulation in the

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dredge spoil containment basin. Operation of the expanded wastewater treatment facilities shall be in accordance with the final effluent limitations of Defendant's NPDES Permit No. DE 0020001 as amended and effective as of May 1, 1986.

5. During groundwater recovery operations, Defendant shall sample the existing monitoring wells quarterly and analyze the samples for total chlorobenzene compounds in accordance with a sampling plan approved by DNREC. Selected wells as approved by DNREC shall be sampled and analyzed annually for benzene; monochlorobenzene; 1,2 dichlorobenzene; 1,4 dichlorobenzene; 1,2,3 trichlorobenzene; 1,2,4 trichlorobenzene; and tetrachlorobenzene.

6. Beginning ninety (90) days from the entry of this Order, Defendant shall submit to DNREC quarterly reports documenting monthly withdrawal rates, amounts of water and contaminants recovered, quarterly sampling results, water table configurations, and configuration of contaminants. DNREC may approve the submission of annual reports instead of quarterly reports if its analysis of documentation from the groundwater pumping and recovery conducted prior to the Order to be submitted to DNREC by Defendant reasonably indicates that annual reports are appropriate. The reports shall also contain an evaluation of the effectiveness of the recovery system and, if necessary, proposals for modification of operations for the following year. All reports shall be signed by a professional geologist registered in Delaware. Records of withdrawals shall be maintained and be available to DNREC upon request.

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7. Defendant shall revegetate any wetland areas destroyed as a result of the January, 1986 spill, using appropriate techniques and species approved by DNREC.

8. Recovered contaminated soils and sludges present in the dredge spoil basin shall be treated using a low temperature thermal treatment process (LTTT) or other appropriate technology as approved by DNREC. The Defendant shall select the technology and submit a proposal and the appropriate permit applications to DNREC within ninety (90) days from the entry of this Order. Such proposal shall include the removal from use of the dredge spoil containment basin. If some form of on-site treatment is the selected method, stripped soils and sludges shall be disposed of on site once the approved levels of residual chlorobenzenes have been achieved.

9. Within thirty (30) days of the entry of this Order, Defendant shall retain at Defendant's expense a consultant to be approved by DNREC to monitor the condition of Red Lion Creek and its adjoining wetland areas. The monitoring shall be performed in accordance with a sampling plan to be proposed by Defendant within one hundred twenty (120) days from the entry of this Order, which shall specify the categories, location and frequency of sampling. Monitoring shall be conducted for three (3) years beginning from the date of Defendant's receipt of notice in writing of the sampling plan approval. At a minimum, monitoring shall include semi-annual analyses of surface water and sediment samples taken in the vicinity of U.S. Route 16034.

Route 9, and the impacted wetland areas, and analyses of fish taken from an area between U.S. Route 13 and U.S. Route 9. In the event that the Defendant demonstrates that the body burden of total chlorobenzenes in the fish drops to below 0.20 ug/g in two (2) consecutive samples taken prior to the end of the three year monitoring period, then subsequent sampling and analysis of fish may be discontinued. A copy of the consultant's reports shall be submitted to DNREC within sixty (60) days after completion of the monitoring.

10. It is Defendant's position that because of the nature of the contaminants involved and because of a lack of adequate technologies, restoration of groundwater to background levels may not be possible. Based upon experience gained in the early stages of recovery and documented in the reports submitted pursuant to paragraph 6 herein, Defendant shall propose technical standards, or closeout levels, for soil and groundwater quality, for review and approval by DNREC based on standards specified in CERCLA as amended by SARA, which will allow adequate protection to human health and the environment from the contamination at the site. If technologies being applied prove inadequate to achieve the technical standards or closeout levels, other technologies, such as biodegradation and surfactant injection, shall be investigated and proposed by Defendant for DNREC approval for application to the site, if consistent with sound scientific, engineering and construction practices, EPA RI/FS guidance documents, and the NCP.

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II. OPERATIONAL IMPROVEMENTS

11. Storage tanks shall be maintained in a condition which meets generally accepted engineering standards. Tanks shall be visually inspected a minimum of annually beginning thirty (30) days from the entry of this Order, and further tested by nondestructive methods every three (3) years. Defendant shall maintain records of the results of these tests and make them available to DNREC on request.

12. Within six (6) months of the entry of this Order, Defendant shall complete the modification of all storage tank diking systems. Each diking system shall be capable of holding not less than 110% of the volume of the largest tank within the system plus all the rainfall from a twenty-five (25) year - twenty-four (24) hour storm.

13. Defendant shall store materials having a freezing point greater than zero (0) degrees Fahrenheit only in tanks which are equipped with adequate steam heating and temperature controls. All vents on fixed roof tanks storing these materials shall be adequately heated and insulated.

14. Within six (6) months of the entry of this Order, Defendant shall submit to DNREC for review and approval a proposal for secondary containment for the tank car loading facilities at the southwest side of the plant, including an implementation schedule. The proposal shall include Defendant's evaluation of the feasibility of providing secondary containment

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for the plant as a whole, or for selected areas. If the study indicates a plan providing secondary containment for the plant as a whole or for selected areas is feasible, then Defendant shall submit an implementation schedule for such plan as part of the proposal, and implement the plan according to the schedule.

15. Within ninety (90) days from the entry of this Order, Defendant shall retain at Defendant's expense a consultant who is approved by DNREC to monitor the safety of the plant operations and equipment for a period of six (6) months. The consultant shall conduct a detailed engineering evaluation of the plant's safety and preventive maintenance programs to evaluate the potential of the various plant operations to create conditions which could cause a degradation of the environment or expose the populace to potential injury. The consultant shall submit a formal report, bearing the seal and signature of a licensed professional engineer of the State of Delaware, to Defendant and DNREC. The maximum charge to be accumulated by the consultant for the services required by this paragraph 15 shall be twenty-five thousand dollars (\$25,000). Defendant shall address all deficiencies found by the consultant, and take immediate steps to institute appropriate corrective measures.

III. REMEDIAL DOCUMENTATION, PLANNING AND RESPONSE

16. Defendant shall document the emergency action of removal of paradichlorobenzene and trichlorobenzene from the January, 1986 spill from Red Lion Creek and its adjoining wetlands.

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reporting in an emergency cleanup document all activities including but not limited to data, quality assurance and quality control documentation, and the results of all tests performed in conjunction therewith, including all tests in Defendant's possession performed to determine the cause of the collapse of tank #404. Defendant shall submit its report of the emergency cleanup from the January, 1986 spill within ninety (90) days of the entry of this Order. DNREC shall review the emergency cleanup document, and shall notify the Defendant in writing if DNREC determines that further documentation of the spill is warranted. Within thirty (30) days after receipt of such notice in writing from DNREC, Defendant shall provide either a written statement to DNREC as to why further documentation should not be required, or submit any further documentation it may develop to DNREC. DNREC shall review the written statement or further documentation, as the case may be, and determine whether or not additional documentation of the 1986 spill is warranted pursuant to paragraph 22 of this Order.

17. Within thirty (30) days of the entry of this Order, Defendant shall submit to DNREC for approval the final work plan for the Phase I Remedial Investigation and Feasibility Study (Phase I RI/FS). The work plan shall include the modifications to the draft work plan for the Phase I RI/FS submitted to DNREC in October, 1986, and Defendant's plan for quality assurance and quality control. The Phase I RI/FS shall address primarily the 1981 spill, but shall also include

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additional monitoring data and remedial actions taken from 1982 to 1986.

18. DNREC shall review the work plan for the Phase I RI/FS, and shall notify the Defendant in writing as to whether the work plan is approved or disapproved. If the work plan is approved, Defendant shall commence the Phase I RI/FS within thirty (30) days of receipt of written notification from DNREC of such approval.

19. If the work plan is disapproved in whole or in part, then DNREC shall notify Defendant in writing of the specific inadequacies, and shall include requests for appropriate amendments or revisions. DNREC may also provide proposed amendments or revisions. Within thirty (30) days after receipt of written notice of disapproval, Defendant shall either submit revisions to DNREC to correct the alleged inadequacies or shall provide a written statement to DNREC as to why the proposed work plan should be approved as submitted. DNREC shall review Defendant's submission of revisions or statements in support of the original work plan and approve or disapprove the submission within thirty (30) days, during which period DNREC and Defendant shall confer in an attempt to achieve agreement on any disputed issues. If agreement is achieved, Defendant shall commence the Phase I RI/FS within thirty (30) days after receipt of written notification from DNREC of such approval.

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20. The Phase I RI/FS shall be conducted in accordance with the applicable U.S. Environmental Protection Agency RI/FS guidance documents, Phase I RI/FS report format outlines submitted to Defendant by DNREC, and the NCP. Any existing reports may be incorporated into the Phase I RI/FS, including any existing documents of quality assurance and quality control. Existing reports shall be supplemented as necessary to complete the Phase I RI/FS. Defendant shall submit the Phase I RI/FS report to DNREC within one hundred twenty (120) days of Defendant's receipt of written notification of approval of the Phase I RI/FS work plan.

21. DNREC shall issue a State of Delaware record of decision (ROD) concerning the Phase I RI/FS report. If the report is disapproved in whole or in part, DNREC shall notify Defendant in writing of the specific inadequacies and shall include requests for appropriate amendments or revisions. DNREC may provide proposed amendments or revisions to the Defendant. Within thirty (30) days of receipt of a written notice of such disapproval, Defendant shall either submit revisions to correct the alleged deficiencies regarding the report, or provide a written statement to DNREC as to why the report should be approved as submitted. DNREC shall review Defendant's submissions of revisions or statement in support of the Phase I RI/FS report and approve or disapprove Defendant's submission or statement within thirty (30) days, during which period of time the Defendant and DNREC shall confer in an attempt to achieve agreement on

any disputed issues. If agreement can be achieved, the DNREC shall notify Defendant in writing of such agreement and approval.

22. Based on its review of the emergency cleanup documentation submitted by Defendant pursuant to paragraph 16 of this Order and any other relevant information, DNREC may require a work plan for a Phase II Remedial Investigation and Feasibility Study (Phase II RI/FS) if DNREC determines that there is potential or immediate harm to human health, welfare or the environment due to the 1986 spill. The scope of the work plan for the Phase II RI/FS shall be determined by DNREC in consultation with Defendant based upon DNREC's review of the emergency cleanup documentation. Defendant shall submit a work plan for the Phase II RI/FS to DNREC within ninety (90) days of the Defendant's receipt of notice in writing from DNREC setting out the scope of the work plan after consultation with Defendant.

23. DNREC shall review the work plan for the Phase II RI/FS, and shall notify the Defendant as to whether the work plan is approved or disapproved. If the work plan is approved, Defendant shall commence the Phase II RI/FS within thirty (30) days after receipt of written notification from DNREC of such approval.

24. If the work plan is disapproved in whole or in part, then DNREC shall notify Defendant in writing of the specific inadequacies, and shall include requests for appropriate amendments or revisions. DNREC may also provide proposed amendments or revisions. Within thirty (30) days after receipt of written notification from DNREC of such disapproval, Defendant shall submit a revised work plan to DNREC. **AP200041**

of written notice of disapproval, Defendant shall either submit revisions to DNREC to correct the alleged inadequacies in the work plan or shall provide a written statement to DNREC as to why the work plan should be approved as submitted. DNREC shall review Defendant's submission of revisions or statements in support of the work plan and approve or disapprove the submission or statement within thirty (30) days, during which period DNREC and Defendant shall confer in an attempt to achieve agreement on any disputed issue(s). If agreement can be achieved, Defendant shall commence the Phase II RI/FS within thirty (30) days after Defendant's receipt of written notification from DNREC of such agreement and approval.

25. The Phase II RI/FS shall be conducted in accordance with the applicable U.S. Environmental Protection Agency RI/FS guidance documents, RI/FS report format outlines submitted to Defendant by DNREC, and the NCP. Any existing reports may be incorporated into the Phase II RI/FS, including any existing documents of quality assurance and quality control. Existing reports shall be supplemented as necessary to complete the Phase II RI/FS. Defendant shall submit the Phase II RI/FS report within one (1) year of Defendant's receipt of written notification from DNREC of its approval of the Phase II RI/FS work plan.

26. DNREC shall issue a State of Delaware record of decision (ROD) concerning the Phase II RI/FS report. If the Phase II RI/FS report is disapproved in whole or in part, DNREC shall

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shall notify Defendant in writing of the specific inadequacies and shall include requests for appropriate amendments or revisions. DNREC may provide proposed amendments or revisions to the Defendant. Within thirty (30) days of receipt of a written notice of such disapproval, Defendant shall either submit revisions to correct the alleged deficiencies regarding the Phase II RI/FS report, or provide a written statement to DNREC as to why the Phase II RI/FS report should be approved as submitted. DNREC shall review Defendant's submissions of revisions or statement in support of the Phase II RI/FS report and approve or disapprove the submissions or statements within thirty (30) days, during which period of time the Defendant and DNREC shall confer in an attempt to achieve agreement on any disputed issue(s). If agreement can be achieved, the DNREC shall notify Defendant in writing of such agreement and approval.

27. Neither this Order nor approval of any work plan, draft work plan, RI/FS or RI/FS report referred to in this Order shall in any way bind or obligate Defendant to the implementation of any remedial alternative or recommended course of action contained in any such work plan, RI/FS or RI/FS report. The failure to reach agreement on any issue shall not be construed to release or relieve the Defendant from any liability under 42 U.S.C. §9601 et seq. or 7 Del. C. Chapters 60 and 63.

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IV. PENALTIES

28. Defendant shall pay to DNREC within thirty (30) days of the entry of this Order a civil penalty pursuant to 7 Del. C. §6005 in the amount of \$5,000 for the violation on January 5, 1986.

29. DNREC shall submit to Defendant an itemized statement of its costs of emergency cleanup, remedial measures, oversight and enforcement. Defendant shall remit payment of such costs pursuant to 7 Del. C. §§6005(c) and 6308(4) within thirty (30) days of receipt of such itemized statement.

30. DNREC shall submit to Defendant annually an itemized statement of its costs for the oversight of the site incurred during the previous year. Defendant shall remit payment of those oversight costs within thirty (30) days of receipt of such statement.

31. Defendant shall pay to DNREC a stipulated penalty of \$1,000 per day for each violation of Defendant's obligations under this Order.

V. MISCELLANEOUS

32. DNREC and Defendant recognize and agree that full and complete implementation of this Order may be contingent upon access to sites which the Defendant does not own and does not have possession or control over. Defendant shall use its best efforts to obtain site access agreements from the present owners. Such agreements shall provide reasonable access to DNREC and its

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authorized representatives. If Defendant cannot obtain site access agreements, DNREC shall exercise its authority wherever possible to secure sufficient access to the sites for the Defendant, its consultant, and their agents.

33. Any failure of Defendant to comply with the terms and conditions set forth in this Order in the event and to the extent that compliance shall be prevented or delayed by causes beyond the reasonable control of the Defendant, including but not limited to the obtaining of necessary permits or approvals when Defendant has taken all required steps necessary to obtain such permits or approvals, and the obtaining of legal access to property when Defendant has taken all reasonable steps necessary to obtain such access, shall not be grounds for finding a breach or violation of this Order. In order to avail itself of the protection of this paragraph, Defendant must notify DNREC in writing within five (5) working days of Defendant's knowledge of such circumstance. Such notice shall clearly indicate that Defendant is providing notice pursuant to this paragraph 33, and shall specify: (1) the obligation affected by the delay, (2) the specific occurrence which caused the delay, (3) substantiating documentation of the delay; and (4) the duration of the delay expected to result from such occurrence. The time for performance of any activity delayed by circumstances beyond the reasonable control of Defendant shall be extended for the time period of such delay, and if such circumstances prevent performance, such performance shall be extended unless and until circumstances

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so change that the performance is no longer prevented. Financial inability shall not be considered a cause beyond the control of Defendant. Defendant shall use its best efforts to anticipate and minimize or avoid any delay or prevention of performance of its obligations under this Order.

34. DNREC covenants not to sue or take any other civil or administrative action against Defendant for "Covered Matters". "Covered Matters" shall include any and all civil liability for reimbursement of response costs, injunctive relief, or damages for injury to, destruction of, or loss of natural resources pursuant to Sections 106 and 107 of CERCLA, as amended, 42 U.S.C. §9601 et seq., and any and all other civil liability, including liability pursuant to 7 Del. C. Chapters 60 or 63, for all violations alleged in the Complaint.

(a) Nothing in this Order is intended nor shall it be construed as a release or covenant-not-to-sue for any claim or cause of action, administrative or judicial, civil or criminal, past or future, in law or in equity, which DNREC may have against Defendant for:

1) any continuing liability as a result of failure to make payments required by paragraphs 28 or 29 of this Order; and

2) any matters not expressly included in Covered Matters.

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(b) Nothing in this Order shall be construed to grant Defendant immunity from the enforcement of the requirements of 42 U.S.C. §9601 et seq. or 7 Del. C. Chapters 60 and 63 with respect to (1) any future violations or violations not known to DNREC prior to the entry of this Order, or (2) any further cleanup, penalties or claims for damages for injury to, destruction of, or loss of natural resources for surface or groundwater contaminated as a result of cleanup efforts.

(c) Nothing in this Order shall be construed to waive or in any way limit any rights of contribution which Defendant may have against any person not a party to this Order, provided, however, that Defendant agrees not to assert any claim or cause of action against the United States of America or the Hazardous Substance Superfund arising out of Covered Matters.

35. All documents delivered to DNREC in the course of implementing this Order shall be available to the public unless identified as confidential in conformance with applicable Delaware law.

36. Defendant has, and at its sole discretion may exercise, the right to retain or discharge any consultant for the purpose of performing any work pursuant to this Order.

37. The provisions of this Order shall apply to and be binding upon the parties to this action, their successors, privies and assigns. No change in ownership or corporate status relating to the Delaware City plant shall in any way alter the Defendant's responsibilities under this Order.

AR200047

38. This Order may be amended by mutual agreement of the parties with approval of the Court. Such amendment shall be in writing and fully executed and shall become effective upon such approval of the Court. No provision of this Order shall be waived without the written approval of DNREC. Waiver of any one provision shall not constitute a general waiver and shall not be considered an express or implied waiver of any other provision.

39. This suit shall be dismissed upon the entry of this Order without prejudice to the parties to seek in any future action appropriate relief in this Court for any failure to satisfy the agreements set forth in this Order. In addition, if agreement cannot be achieved through the procedures outlined in paragraphs 19, 21, 24 and 26 of this Order, or if disputes arise concerning any other portion of this Order, including but not limited to the selection of technical standards or closeout levels as provided in paragraph 10 of this Order, Defendant or DNREC may apply to the Court for review. In such review, the Court shall determine whether the work plan, RI/FS, RI/FS report or any other action or proposed action, is consistent with and satisfies this Order and the criteria of the NCP. In hearing this matter, the Court shall have the right to consider all issues of fact and law not reconciled by agreement, and shall resolve such issues on the basis of its own independent judgment. The parties shall have the right to present evidence to the Court in support of their case. Specifically, the Defendant reserves the right to demonstrate to the Court why its proposed action

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meets the requirements of this Order and should have been approved by DNREC.

40. If during the course of performance of the actions required by this Order, DNREC determines that the Defendant has failed to comply with this Order, DNREC shall submit to the Defendant written notice of such noncompliance. The Defendant reserves the right to object to such notice. Such objection must be received by DNREC no later than twenty (20) working days subsequent to the Defendant's receipt of the notice of noncompliance. If the Defendant fails to remedy the noncompliance in a timely manner, DNREC may initiate appropriate enforcement action against the Defendant.

41. In the event DNREC determines that activities implementing this Order are creating an imminent and substantial endangerment to the health and safety of the people on the site or in the surrounding area or are creating a public nuisance, DNREC may order the Defendant to stop further implementation of the Order for such period of time as needed to abate the hazard or public nuisance, provided that during this period of time the Defendant's obligations pursuant to this Order shall be suspended and the time schedule for implementation shall be extended by the time period of the delay.

42. No part of this Order shall constitute or be interpreted or construed as an admission by the Defendant of liability or fault under any federal, state or local law with respect to any facts or conclusions of law set forth herein.

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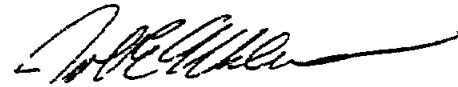
part of this Order may be admitted into evidence against the Defendant in any legal, equitable or administrative proceeding, except for purposes of enforcement of this Order, and no part of this Order may be used as an admission against the interests of the Defendant, its directors, officers, affiliated persons or institutions. Nothing contained herein shall affect the rights or liabilities of any person who is not a party to this Order, nor shall any provisions of this Order operate or be construed as a waiver of any right or defense which the company may have pursuant to statutory or common law. Provided, however, that nothing shall relieve the Defendant from performing its obligations as set forth in this Order.

43. The costs of this action shall be paid by the Defendant.

Date: December 4, 1987



Michael F. Foster, State Solicitor
Department of Justice
Carvel State Office Building
820 N. French Street
Wilmington, DE 19801




John E. Wilson, III
Secretary
Department of Natural
Resources and Environ-
mental Control



Jeanne L. Langdon, Esquire
Department of Natural Resources and
Environmental Control
89 Kings Highway
Dover, Delaware 19903
Attorneys for Plaintiff

AR200050


A. R. Sinibaldi
Senior Vice President
Standard Chlorine of Delaware, Inc.
Governor Lea Road
P.O. Box 319
Delaware City, DE 19706

SO ORDERED, this _____ day of

_____, 1987.

J.

AR200051